



State of California
Commission on Judicial Performance
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Date: November 25, 2008

To: Persons and Organizations Interested in Rules Relating to Proceedings of the Commission on Judicial Performance

From: Commission on Judicial Performance
Victoria B. Henley, Director-Chief Counsel

Subject: Invitation to Comment on Proposed Amendments to Rules of the Commission on Judicial Performance;

Policy Declaration 3.5 of the Commission on Judicial Performance provides that every two years, in even-numbered years, the commission should review its rules and seek public comment on any proposed enactments, amendments or repeals. As part of the 2008 review of its rules, the commission has approved circulation of a proposal for the amendment of rules 114, 116 and 108(e) (extension of time to contest admonishment not permitted), and subdivision (b) of rules 114 and 116 (written statement of objections when demanding appearance to contest admonishment). The commission also seeks comment concerning the proposed addition to rule 102 (disclosure of closing to judge who provides information to commission).

The proposed amendments with a brief explanation of the changes and a form for submission of comments can be found on the commission's Web site at www.cjp.ca.gov under Governing Provisions/Commission Rules. The deadline for comments is January 26, 2009.

Comments may be submitted by mail or facsimile to:

Commission on Judicial Performance
Attn: Janice Brickley, Legal Advisor to Commissioners
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102
FAX: (415) 557-1266

At its October 21, 2008, the commission adopted Policy Declaration 7.1 (non-exclusive factors relevant to sanctions). The Policy Declarations can be found on our Web site under Governing Provisions.

Proposal No. 1

[PROPOSED AMENDMENTS TO RULES 114 (b) AND 116 (b) TO REQUIRE THE SUBMISSION OF A WRITTEN STATEMENT OF THE BASIS OF THE JUDGE'S OBJECTION TO THE NOTICE OF INTENDED ADMONISHMENT WHEN MAKING A DEMAND FOR AN APPEARANCE]

The proposed revision would amend subdivision (b) of rule 114 accordingly:

(b) (Appearance before the commission) The judge may, within 30 days of the mailing of a notice of intended private admonishment, file with the commission ~~written objections to the intended private admonishment, waive the right to formal proceedings under rule 118 and to review by the Supreme Court,~~ *a written demand for an appearance before the commission to contest the intended private admonishment, and waive the right to formal proceedings under rule 118 and to review by the Supreme Court. A judge who demands an appearance before the commission to contest a notice of intended private admonishment shall, within 30 days of the mailing of the notice of intended private admonishment, submit a written statement of the judge's objections to the commission's proposed admonishment. The statement shall include the basis of the judge's objection.*

* * *

The proposed revision would amend subdivision (b) of rule 116 accordingly:

(b) (Appearance before the commission) The judge may, within 30 days of the mailing of a notice of intended public admonishment, file with the commission ~~written objections to the intended private public admonishment, waive the right to formal proceedings under rule 118 and to review by the Supreme Court~~ *a written demand for an appearance before the commission to contest the intended public admonishment, and waive the right to formal proceedings under rule 118 and to review by the Supreme Court. A judge who demands an appearance before the commission to contest a notice of intended public admonishment shall, within 30 days of the mailing of the notice of intended public admonishment, submit a written statement of the judge's objections to the commission's proposed admonishment. The statement shall include the basis of the judge's objection.*

* * *

Explanation of Proposed Amendment to Rules 114 (b) and 116 (b)

The proposed amendments would require a judge who demands an appearance to contest a notice of intended private or public admonishment to file written objections explaining the basis of the judge's objection to the admonishment. There appears to be some ambiguity in the

current rule as to whether a demand for an appearance must be accompanied by a written statement of the basis for the judge's objection. Requiring written objections would ensure that the commission understands why the judge is contesting the admonishment prior to the appearance.

Proposal No. 2

[THE PROPOSED AMENDMENTS WOULD ADD SUBDIVISION (d) TO RULES 114 AND 116 AND AMEND RULE 108 (e) TO PROVIDE THAT THE 30 DAYS PROVIDED TO CONTEST A NOTICE OF INTENDED PRIVATE OR PUBLIC ADMONISHMENT MAY NOT BE EXTENDED, BUT EXTENSIONS OF TIME TO FILE A WRITTEN STATEMENT OF THE JUDGE'S OBJECTIONS MAY BE GRANTED IF A DEMAND FOR AN APPEARANCE HAS BEEN TIMELY FILED]

The proposed amendment would add the following subdivision to current rules 114 and 116, which delineate the judge's options following receipt of a notice of an intended private admonishment (rule 114) or public admonishment (rule 116):

(d) (Extensions of time) The 30 days provided to contest an admonishment pursuant to subdivision (b) and (c) may not be extended. The time for filing a written statement of the judge's objections to the intended admonishment pursuant to subdivision (b) may be extended by the chairperson or the chairperson's designee upon a showing of good cause, if the judge has, within 30 days of the mailing of a notice of intended private [or public] admonishment, filed a demand for an appearance with a personal waiver of the right to formal proceedings and to review by the Supreme Court.

The proposed revision to rule 108(e) (the general rule on extensions of time) would provide as follows (in italics):

(e) (Other extensions of time) Any other or further extension of time, *other than to demand an appearance before the commission to contest a private or public admonishment pursuant to rules 114(b) or 116(b), or to demand formal proceedings pursuant to rules 114(c) or 116 (c)*, may be granted by the chairperson only upon a showing of good cause.

Explanation of Proposed Amendment to Rules 114, 116, and 108

Rules 114 (private admonishment procedure) and 116 (public admonishment procedure) provide that an admonishment becomes effective if the judge does not contest it within 30 days after the mailing of a notice of intended admonishment. The commission has been of the view that the 30 days is jurisdictional and cannot be extended. The proposed rule revisions would eliminate any ambiguity in this regard by explicitly providing that following issuance of a notice of intended private or public admonishment, extensions of time to demand an appearance before

the commission or to demand formal proceedings are not permitted. However, there may be occasions where circumstances provide good cause for an extension of time to submit a written statement explaining the basis of the judge's objections. The proposed revision would permit extensions of time to file a written statement of the judge's objections under those circumstances, so long as the judge has filed a demand for an appearance and waived the right to formal proceedings and to Supreme Court review within 30 days of the mailing of the notice of intended admonishment.

Proposal No. 3

[THE PROPOSED ADDITION OF SUBDIVISION (o) TO RULE 102 WOULD AUTHORIZE NOTIFICATION OF THE CLOSING OF A COMPLAINT TO A JUDGE WHO IS THE SUBJECT OF THE COMPLAINT AND HAS VOLUNTARILY PROVIDED INFORMATION TO THE COMMISSION CONCERNING THE COMPLAINT]

The proposed amendment would add the following subdivision to rule 102 which provides for confidentiality and disclosure in commission proceedings:

(o) (Disclosure of closing to judge who provides information to the commission)

Upon completion of an investigation or proceeding, the commission may notify a judge who is the subject of a complaint and has voluntarily provided information to the commission concerning the complaint, that the commission has found no basis for action against the judge or determined not to proceed further in the matter. The notification shall be in writing.

Explanation of Proposed Amendment to Rule 102

At times, a subject judge learns of a pending complaint before the commission from a source other than the commission and voluntarily provides information to the commission before the matter has been opened for an investigation. The proposed rule provides that, under those circumstances, the judge can be notified if the commission determines to close the complaint without asking for the judge to respond to the allegations.